

TENNESSEE BOARD OF OPTOMETRY MINUTES

Date: February 11, 2004

Time: 9:00 a.m., CST

Location: Tennessee Room
Ground Floor, Cordell Hull Building
Nashville, TN 37247

Members Present: Terry Hendrickson, O.D., Chair
Scott Spivey, O.D., Vice Chair
Jerry Richt, O.D., Secretary
Eddie Abernathy, O.D.
Jeff Foster, O.D.
Brian Browder

Staff Present: Sheila Bush, Board Administrator
Barbara Maxwell, Administrative Director
Nicole Armstrong, Advisory Attorney
Jerry Kosten, Regulations Manager
Lea Phelps, Disciplinary Coordinator

Dr. Hendrickson, chair, call the meeting to order at 9:00 a.m. All board members were in attendance.

Review Minutes

Upon review of the November 13, 2003 minutes, Dr. Spivey made a motion, seconded by Dr. Foster, to approve the minutes as written. The motion carried.

On behalf of the board, Dr. Hendrickson thanked Dr. Richt for his leadership and contribution to the board as board chair over the past years.

Report from Nicole Armstrong, Advisory Attorney

Ms. Armstrong reviewed the Conflict of Interest policy with the board and said if an action came before the board in which a board member had any interest; the member must disclose that interest to determine if the member should recuse themselves from the proceedings.

Ms. Armstrong stated there are two complaints in the Office of General Counsel pertaining to the board of Optometry; however, no contested cases were scheduled for today's meeting.

Report from Jerry Kosten, Rules Manager

Mr. Kosten discussed the rulemaking hearing conducted February 2, 2004 to amend the application review, approval and denial. Mr. Kosten explained the rule details the application process regarding incomplete, denied and restricted applications. Upon review, Dr. Richt made a motion, seconded by Dr. Spivey, to adopt the amendment as written. A roll call vote was conducted and all members voted in the affirmative.

Mr. Kosten discussed the rulemaking hearing held December 23, 2003 to amend the rules, for all health related boards, pertaining to disciplinary actions, civil penalties, order modification, settlements and screening panels. Mr. Kosten explained a respondent must provide proof of compliance, i.e., drug screenings, continuing education, supervision and appear before the Board before his/her license could be reinstated or taken off probation. Upon review, Dr. Abernathy made a motion, seconded by Dr. Spivey, to adopt the amendments as written. A roll call vote was conducted and all members voted in the affirmative with the exception of Mr. Browder who voted no. The motion carried.

Mr. Kosten discussed the rule amendment regarding the release of contact lens prescriptions to coincide with Federal law. Upon discussion, Dr. Hendrickson asked Dr. Foster to draft language for a policy statement regarding the release of contact lens prescriptions until the amendment to the rules becomes effective.

Dr. Richt made a motion, seconded by Mr. Browder, to remove the current policy statement on the Internet regarding contact lens prescriptions. The motion carried.

Mr. Kosten discussed an amendment to the rules regarding optometric patient records which would clarify how long records are kept, transfer of records, minor patients, and destruction of records, patient abandonment and public notices. Mr. Browder suggested changing the amendment to public notices to read: May be accomplished by a public notice or any other manner reasonably designed to inform the patient.

Upon discussion, Dr. Abernathy made a motion, seconded by Dr. Foster, to accept the amendments as discussed. The motion carried.

Investigative Report

Ms. Carney, Office of Investigations, reviewed the investigative report with the board. Ms. Carney stated there was one new complaint received in January and four complaints closed, one with no action and three with letters of concern.

Disciplinary Report

Ms. Phelps, Disciplinary Coordinator, reviewed the disciplinary report with the board. Ms. Phelps said there were currently four practitioners being monitored. Ms. Phelps said three practitioners were on probation and one had his license suspended and must appear before the board to be

reinstated. Ms. Phelps stated she also included a list of all disciplined optometrists for the board's review.

Financial Report

Mr. Kosten reviewed the financial report with the board and stated the board's legal fees depleted their surplus leaving the board with a \$15,761 deficit. Mr. Kosten stated there is a bill in legislature requiring those boards, whose revenues and expenses do not equal, to automatically revert to wind down, which means the board will eventually cease to exist. Upon discussion, Dr. Abernathy made a motion, seconded by Dr. Foster, to raise all fees \$100. The motion carried.

Administrative Report

Ms. Bush reviewed the administrative report stating the renewal processing time has decreased considerably due to licensees utilizing the internet renewal system. Ms. Bush said that with the exception of new applications, all files for Optometry have been imaged.

Ms. Bush stated there is legislation that may affect the board and asked the members to review the synopsis of legislation at the end of the administrative report.

Substitute Optometrists

The board discussed the responsibilities for substitute optometrists and their employers. Dr. Hendrickson said as a sole propriety he has a colleague covering his responsibilities but not on a daily basis. Dr. Spivey said if you contract with a colleague to see your patient while out of town, that doctor is responsible to assure the patient is seen. Dr. Hendrickson said he would contact TOA to request that be put in the newsletter.

Non-corrective contact lens

Ms. Armstrong informed the board that currently non-prescribed contact lens are considered cosmetic, however, there is legislation to change this and has a good chance of passing as the main sponsor of the bill is an optometrists.

Ms. Armstrong said she drafted a letter for the board's review to submit to the AG's Office requesting an opinion as to whether the board can prosecute for the sale of non-prescribed contact lens. Upon review of the letter, Mr. Browder requested the letter be flowered up to indicate the board believes it has the authority to take action. Dr. Foster made a motion, seconded by Dr. Spivey, to send the letter Nicole drafted to the Attorney General with the amended language. The motion carried.

Continuing Education

Ms. Bush stated the administrative staff will conduct a 50% continuing education audit for the board. Upon discussion, the board requested staff to conduct a 25% continuing education audit for the year 2003. Ms. Bush stated that Mr. Agee suggested a consultant review the continuing

education. Dr. Foster agreed to review any continuing education that was questionable. Dr. Richt said any course not through COPE or the Tennessee Optometry Association (TOA) must be approved by the board at least thirty (30) days prior to the course date and the rules give an outline of which must be submitted for course approval.

Senate Bill 2311

Ms. Bell discussed Senate Bill 2311 regarding criminal background checks for new applicants. Ms. Bell said the applicant would pay for the background check through the TBI who would submit the documentation to the board as part of the application package. Ms. Bell said the cost to the applicant would be around \$50. All board members agreed to include the criminal background checks as part of their application process.

Homeland Security

Ms. Bell stated that Health Related Boards (HRB) is trying to obtain all practitioners e-mail addresses for security purposes. This would be for mass mailing emergencies such as SARS outbreak, earthquake, disaster, etc. Ms. Bell informed the board members they could update their e-mail addresses via the board's website or by contacting the board administrator.

Correspondence

The board reviewed a letter from **Dr. Timothy Haas** requesting continuing education hours for a VOSH trip to Valles, Mexico. The board denied Dr. Haas request and Dr. Richt requested staff to send Dr. Haas a letter commending him for his humanitarian efforts and send him the rules for continuing education.

The board discussed **Dr. Christina Barnes** request for board sponsorship to take the national exam. Dr. Richt said candidates could not sit for the national exam unless they are a graduate from an accredited school or sponsored by a State board to sit for the exam. Dr. Hendrickson said the board could give Dr. Barnes the endorsement to sit for the national board but to make it clear to Dr. Barnes that it doesn't give her the requirements for licensure in Tennessee.

Tennessee Optometric Association

The board requested to conduct a board meeting at the August 19-22, 2004 Tennessee Optometric Association annual meeting in Chattanooga, Tennessee. Ms. Bell asked the board to put that request in writing.

Continuing Education waiver requests

The board reviewed a letter from **Dr. Chung Song** requesting a waiver of Part 3 of the national boards. Upon discussion, the board granted the waiver of Part 3.

The board reviewed a letter from **Dr. Joel Halpren** requesting a waiver of the NBEO exam. Dr. Halpren passed the TMOD and has applied to be an instructor at the Southern College of

Optometry. Dr. Richt requested staff to send Dr. Halpren a copy of the practice act and to request a letter from the Optometry school regarding the courses Dr. Halpren will be teaching. Dr. Foster made a motion, seconded by Dr. Richt, to delay a decision on Dr. Halpren's request until receipt of additional information. The motion carried.

Ratify applications

Dr. Richt made a motion, seconded by Dr. Spivey, to ratify the following newly licensed optometrists:

Michele Bencks, O.D.
Jennifer Jill Pitts, O.D.
Maria Faye Plecha, O.D.

Ms. Bush asked the board to add **Matthew Marsh, O.D.** to the list of newly licensed optometrist.

The motion carried.

Dr. Richt made a motion, seconded by Dr. Foster, to ratify the following reinstated optometrist:

John Potter, O.D.

Ms. Bush asked the board to add **Jennifer Bulmann, O.D.** to the list of reinstated optometrists.

The motion carried.

Other board business

Dr. Richt stated he received a call from Dr. Choate who is having problems getting reimbursement from CIGNA for pachymetry. The medical director for CIGNA asked Dr. Choate to have the board submit a letter stating pachymetry is covered under the board's scope of practice. Dr. Spivey made a motion, seconded by Dr. Foster, to have Dr. Richt draft a letter to CIGNA and submit it to Ms. Bush for the proper letterhead. The motion carried.

Dr. Spivey stated he is assisting the national board with examinations and invited the other board members to attend.

Dr. Richt stated he is attending the ARBO meeting. Dr. Spivey said he would attend the ARBO meeting if approved by the department.

With no other board business to conduct, Dr. Hendrickson made a motion, seconded by Dr. Richt, to adjourn the meeting at 12:30 p.m. The motion carried.

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